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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/590,436	06/09/2000	Jason Wayne Riddering	SEA 9168	1997

7590 10/08/2003

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900 Second Avenue South
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EXAMINER

MILLER, BRIAN E

ART UNIT	PAPER NUMBER
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2652

DATE MAILED: 10/08/2003

15

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/590,436

Applicant(s)

RIDDERING ET AL.

Examiner

Brian E. Miller

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,7-9,11,12,14,16-18,20,21 and 34-45 is/are pending in the application.
- 4a) Of the above claim(s) 41-45 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3,7-9,11,12,14,16-18,20,21 and 34-38 is/are allowed.
- 6) ☒ Claim(s) 39-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1,3,7-9,11,12,14,16-18,20,21 and 34-45 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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Claims 1, 3, 7-9, 11-12, 14, 16-18, 20-21, 34-45 are now pending.

Election/Restrictions

1. Newly submitted claims 41-45 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:
2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1, 3, 7-9, 11-12, 14, 16-18, 20-21, 34-40, drawn to head assembly, classified in class 360, subclass 294.7.
 - II. Claims 41-45, drawn to a method of using the head assembly, classified in class 360, subclass 75.

The inventions are distinct, each from the other because of the following reasons:

- a. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the process for using the product as claimed can be practiced with another materially different product such as one that does not include a gimbal portion.
- b. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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c. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 41-45 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Objections

3. Claims 42-45 are objected to because of the following informalities: (a) claims 42-44 are dependent on claim 39, however, it would appear that they should depend on claim 41.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 39-41 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant(s) regard as their invention. Evidence that claim 41 fail(s) to correspond in scope with that which applicant(s) regard as the invention can be found in Paper No. 8 filed 2/14/03. In that paper, applicant has stated "In particular, FIGS. 17-18 illustrated an embodiment of a gimbal spring including opposed bending elements 242 which are energizable to adjust a roll attitude of the head assembly." (see page 5, lines 18-29), and this statement indicates that the invention is different from what is defined in the claim(s) because nowhere is it suggested (in the remarks or the disclosure) that only one bending element would encompass applicant's invention.

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Furthermore, the claim remains vague since there is no structural cooperation between the “bending assembly” and the rest of the claimed structure, i.e., what other element is the bending assembly positioned on?

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 39-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Chikazawa et al (US 5,313,352). Chikazawa et al discloses a head assembly as shown in at least FIGs. 2A, 3, including: a head suspension 6 (FIG. 1) including a gimbal portion; a head assembly 1, 5 coupled to the gimbal portion; a bending assembly including bending elements 8A-8D positioned spaced from the roll axis appropriately to adjust a roll attitude of the head assembly relative to the roll axis (see col. 5, lines 14-35).

Allowable Subject Matter

6. Claims 1, 3, 7-9, 11-12, 14, 16-18, 20-21, 34-38 are allowable over the prior art.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E. Miller whose telephone number is (703) 308-2850. The examiner can normally be reached on M-F 7:45am-5:15pm (FF off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hoa T. Nguyen can be reached on (703) 305-9687. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9314 for regular communications and (703) 872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4750.



Brian E. Miller
Primary Examiner
Art Unit 2652

bem
October 6, 2003